

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 53 OF 2005

Mr. Harshad H. Rupani
and anr.

..Petitioners.

V/s

Larsen & Toubro Limited
and anr.

..Respondents.

Mr. Kishore Bhatia for the petitioners.
Ms. S. Joshi for respondent No.1.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 28th March, 2005

P.C.:

1. Petitioners are challenging the issuance of process by the Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai on a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

2. The learned Counsel appearing on behalf of the petitioner submitted that, in the complaint, it is alleged that petitioner No.1 is the proprietor of M/s H.H. Rupani and petitioner No.2 is alleged to be the authorized signatory of the cheque alleged to have been issued by M/s H.H. Rupani i.e. the proprietary concern of petitioner No.1. It is submitted that the authorized signatory of the proprietary concern cannot

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be prosecuted as an accused as the provisions of section 141 of the Negotiable Instruments Act cannot be made applicable to him. It is submitted that the Magistrate had issued the process mechanically and there was a complete nonapplication of mind in issuance of process. It is submitted that the Magistrate failed to appreciate that it was clearly averred in the complaint that petitioner No.1 is a proprietor of M.s H.H. Rupani and petitioner No.2 is the authorized signatory to the alleged cheques which were issued by the proprietary concern. It is submitted that the authorized signatory of the cheque cannot be called as a drawer of the cheque and, therefore, the process which was issued against the petitioner was liable to be quashed and set aside.

2. Respondent No.1 have filed a detailed affidavit. It is submitted by the learned counsel appearing for respondent No.1 that petitioner had deliberately exhibited letter dated 15/7/2003 which was never addressed to respondent No.1 nor was it received at any time by respondent No.1. It is further submitted that the petitioner had conveniently suppressed the letter dated 21/2/2004 addressed by them to the petitioner. It is submitted that petitioner No.2 had signed the cheques. Respondent No.1 has denied the

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contention of the petitioners that petitioner No.2 had not signed the cheques. It is further submitted that the entire complaint along with the annexures was not exhibited and the intention was to suppress material facts from the court.

3. The submissions made by the learned Counsel for the petitioners cannot be accepted. All the contentions raised by the petitioners are disputed by respondent No.1. Therefore, these questions can be decided only after the evidence is adduced by both the parties. It is, therefore, not possible to interfere with the order of issuance of process while exercising the inherent jurisdiction of this Court under section 482 of the Criminal Procedure Code. All questions raised in this petition are kept open. The Trial Court shall decide the same on merits and in accordance with law. If an application is made for exemption by the petitioner the same may be considered favourably unless the presence is required for any reason whatsoever.

4. With the above directions, Criminal Writ Petition is dismissed.

V.M. KANADE, J.